

SECOND REGULAR SESSION

# HOUSE BILL NO. 2163

## 101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HOUX.

3661H.011

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To repeal section 194.119, RSMo, and to enact in lieu thereof one new section relating to the right of sepulcher.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 194.119, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 194.119, to read as follows:

194.119. 1. As used in this section, the term "right of sepulcher" means the right to choose and control the burial, cremation, or other final disposition of a dead human body.

2. For purposes of this chapter and chapters 193, 333, and 436, and in all cases relating to the custody, control, and disposition of deceased human remains, including the common law right of sepulcher, where not otherwise defined, the term "next-of-kin" means the following persons in the priority listed if such person is eighteen years of age or older, is mentally competent, and is willing to assume responsibility for the costs of disposition:

(1) An attorney in fact designated in a durable power of attorney wherein the deceased specifically granted the right of sepulcher over his or her body to such attorney in fact;

(2) For a decedent who was on active duty in the United States military at the time of death, the person designated by such decedent in the written instrument known as the United States Department of Defense Form 93, Record of Emergency Data, in accordance with ~~PLR 109-163, Section 564,~~ 10 U.S.C. Section 1482;

(3) The surviving spouse, **unless an action for the dissolution of the marriage has been filed and is pending in a court of competent jurisdiction;**

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (4) Any surviving child of the deceased. If a surviving child is less than eighteen  
18 years of age and has a legal or natural guardian, such child shall not be disqualified on the  
19 basis of the child's age and such child's legal or natural guardian, if any, shall be entitled to  
20 serve in the place of the child unless such child's legal or natural guardian was subject to an  
21 action in dissolution from the deceased. In such event the person or persons who may serve  
22 as next-of-kin shall serve in the order provided in subdivisions (5) to (9) of this subsection;

23 (5) (a) Any surviving parent of the deceased; or

24 (b) If the deceased is a minor, a surviving parent who has custody of the minor; or

25 (c) If the deceased is a minor and the deceased's parents have joint custody, the parent  
26 whose residence is the minor child's residence for purposes of mailing and education;

27 (6) Any surviving sibling of the deceased;

28 (7) The next nearest surviving relative of the deceased by consanguinity or affinity;

29 (8) Any person or friend who assumes financial responsibility for the disposition of  
30 the deceased's remains if no next-of-kin assumes such responsibility;

31 (9) The county coroner or medical examiner; provided however that such assumption  
32 of responsibility shall not make the coroner, medical examiner, the county, or the state  
33 financially responsible for the cost of disposition.

34 3. The next-of-kin of the deceased shall be entitled to control the final disposition of  
35 the remains of any dead human being consistent with all applicable laws, including all  
36 applicable health codes. **The next-of-kin may delegate the control of the final disposition  
37 of the remains of any dead human being to an agent through either a specific or general  
38 grant of power in accordance with section 404.710 if, at the time of delegation, the next-  
39 of-kin was eighteen years of age or older and mentally competent and the principal or  
40 agent is taking financial responsibility for the disposition.**

41 4. A funeral director or establishment is entitled to rely on and act according to the  
42 lawful instructions of any person claiming to be the next-of-kin of the deceased; provided  
43 however, in any civil cause of action against a funeral director or establishment licensed  
44 pursuant to this chapter for actions taken regarding the funeral arrangements for a deceased  
45 person in the director's or establishment's care, the relative fault, if any, of such funeral  
46 director or establishment may be reduced if such actions are taken in reliance upon a person's  
47 claim to be the deceased person's next-of-kin.

48 5. Any person who desires to exercise the right of sepulcher and who has knowledge  
49 of an individual or individuals with a superior right to control disposition shall notify such  
50 individual or individuals prior to making final arrangements.

51 6. If an individual with a superior claim is ~~[personally served with written notice~~  
52 ~~from]~~ **notified in person or by written notice with delivery confirmation to such person's**  
53 **last known address** by a person with an inferior claim that such person desires to exercise

54 the right of sepulcher and the individual so served does not object within forty-eight hours of  
55 ~~[receipt]~~ **such notice**, such individual shall be deemed to have waived such right. An  
56 individual with a superior right may also waive such right at any time if such waiver is in  
57 writing and dated.

58         7. If there is more than one person in a class who are equal in priority and the funeral  
59 director has no knowledge of any objection by other members of such class, the funeral  
60 director or establishment shall be entitled to rely on and act according to the instructions of  
61 the first such person in the class to make arrangements; provided that such person assumes  
62 responsibility for the costs of disposition and no other person in such class provides written  
63 notice of his or her objection. If the funeral director has knowledge that there is more than  
64 one person in a class who are equal in priority and who do not agree on the disposition, the  
65 decision of the majority of the members of such class shall control the disposition.

66         8. For purposes of conducting a majority vote under subsection 7 of this section, the  
67 funeral director shall allow voting by proxy using a written authorization or instrument.

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